

Judge Barnes, cont.

the Regional Director's Citation in 1989 and 1998 for innovative and effective child support enforcement from the U.S. Department of Health and Human Services, and in 1995 received the State Director's Award for Outstanding Child Support Program from the Indiana Family & Social Services Administration.

While Prosecutor, Judge Barnes was elected President of the National District Attorneys Association (1995-1996), Chairman of the Board, Indiana Prosecuting Attorneys Council (1982-1983, 1992-1993), President of the St. Joseph County Bar Association (1992-1993), National Board of Trial Advocacy (1995-1996), National Advisory Council on Violence Against Women (1997), Chairman of the Board of Regents, National College of District Attorneys (1997-1998), American Prosecutor's Research Institute (1997-1998), and various other professional and civic organizations.

The Indiana Victim Assistance Network honored him with its Special Advocate Award in 1989, and in 1998 he received the Eugene "Shine" Feller Award from the Indiana Prosecuting Attorneys Council.

Judge Barnes supports a wide range of community organizations, especially those that serve vulnerable populations. He is a longtime supporter of the LOGAN Center's annual Nose-On campaign and in 1986 received its Joseph J. Newman Award for Committed and Outstanding Advocacy on Behalf of Developmentally Disabled Individuals.

He also has served on the boards of the St. Joseph County Chapter of the American Cancer Society and the Alcoholism Council of St. Joseph County.

Judge Barnes is a member of the Indiana Bar Foundation, the St. Joseph County Bar Association, the Indiana State Bar Association, and the Illinois

State Bar Association.

Judge Barnes is married to Alberta Barnes, a retired educator. They are the parents of two sons, Tim and John. Tim is an attorney in Washington, D.C. John is a TV producer at NBC Sports. John and his wife, Bess, are the parents of the world's most perfect granddaughter, Addison Emily.

He lives in South Bend and is an avid baseball fan and reader.

Judge Mathias, cont.

topics to attorneys and judges. As a member of the Judicial Technology and Automation Committee, he helped select the Odyssey Case Management System that brought the management of state court records into the 21st Century.

Judge Mathias is a longtime supporter of *We the People*, a national civics education program sponsored in Indiana by the Indiana Bar Foundation. He coaches high school *We the People* teams in Indiana's 5th Congressional District and helps organize *We the People* competitions in the 3rd Congressional District.

In 2010, he received the Indiana Bar Foundation's William G. Baker Civic Education Award for his work in civics education.

Judge Mathias has been married for more than 36 years and is the proud father of two sons who teach at the high school level. His wife, Carlabeth, is a private practice counselor for children and families and a consultant to schools throughout Indiana.

Judge Mathias enjoys Macintosh computers, technology in general and photography. He also enjoys spending many Saturdays during the school year helping to build theatrical sets for Hamilton Southeastern High School.

MISSION STATEMENT:
"TO SERVE ALL PEOPLE
BY PROVIDING EQUAL JUSTICE
UNDER LAW"

Attorneys for the Parties

Anthony C. Lawrence is a Madison County native who graduated from Anderson University in 1991.

After attending graduate school at Ball State University, he earned his law degree from Thomas M. Cooley Law School (Western Michigan University) in 1999. He was admitted to the Indiana Bar on June 4, 1999 and is licensed to practice before the Northern and Southern United States Districts Courts of Indiana.

After working in the Madison County Prosecutor's Office as a Deputy Prosecuting Attorney, he began his private law practice in Anderson. He has served as a Public Defender in Madison County Unified Courts for most of his private practice, currently serving in the Madison County Circuit Court Division VI. He has been involved in many major felony cases for both the prosecution and the defense.

Mr. Lawrence currently maintains a civil, criminal, and appellate practice. He was honored to have previously argued a case before the Indiana Supreme Court in the matter of *George Jackson v. State of Indiana*.

Katherine Modesitt Cooper represents the State when a convicted defendant appeals his conviction and/or sentence. Ms. Cooper graduated with honors from Miami University in 1989 with a bachelor of science degree in Mass Communications. She obtained her J.D. in 1992 from Indiana University School of Law-Indianapolis.

Ms. Cooper rejoined the Office of the Attorney General in 2011, having served as a deputy attorney general once before in the late 1990s. Ms. Cooper served as a deputy prosecutor in Marion County for many years, where she specialized in prosecuting crimes of domestic violence and held positions as the Assistant Supervisor and Court Supervisor in the Domestic Violence Unit.

Ms. Cooper has also practiced with two Indianapolis-based law firms, where she concentrated her legal practice in the areas of insurance defense and worker's compensation.

She is a native of Terre Haute, and currently resides in Zionsville, Indiana, with her family. She is an active volunteer in several community organizations, her church, and her children's school.

SYNOPSIS

In December 2012, Tiras Johnson pleaded guilty in Madison Circuit Court to Class D felony assisting a criminal under Cause Number 48Co4-0911-FC-667. Johnson was ordered to serve a 24-month sentence, with 12 months on in-home detention and 12 months on probation. Johnson also pleaded guilty in Madison Circuit Court to Class D felony possession of marijuana and Class A misdemeanor possession of paraphernalia under Cause Number 48Co4-1201-FD-164.

Johnson was ordered to serve an aggregate 24-month sentence, which was entirely suspended to probation. But Johnson was ordered to serve the sentence consecutive to the sentence imposed under Cause Number 48Co4-0911-FC-667.

On Feb. 26, 2014, after Johnson had completed 12 months of home detention, but while still on probation, the State filed a notice alleging that Johnson had violated his probation. The notice alleged that Johnson had violated probation by committing possession of and dealing in marijuana.

Specifically, on Feb. 19, 2014, Anderson Police Department Officers Chad Boynton and Chris Frazier, who had received reports of possible drug activity occurring at a duplex on Main Street in Anderson, were performing surveillance of the duplex when they decided to approach the duplex and knock on the door. Officer Boynton heard a man's voice inside the residence, and Johnson answered the door. The officer smelled the odor of burnt marijuana at the door of the residence.

Johnson spoke to the officer and stated that he did not live at the residence, but it belonged to his friend Brittany Brooks, who was at school. Officer Boynton asked to come inside the residence, and Johnson refused to allow him entry, but stepped outside to speak with the officers. Johnson was then handcuffed and read his Miranda rights. The officer explained that he wanted to investigate the odor of marijuana, and Johnson replied that he had not smoked marijuana, but had been smoking spice. Based on Johnson's

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Court of Appeals of Indiana

Hearing oral argument at

Manchester University

Tuesday, April 14, 2015 @ 3:30 p.m.



Johnson v. State

48A05-1406-CR-269

On Appeal from Madison Circuit Court

The Honorable David A. Happe, Judge

APPEALS ON WHEELS

The Court of Appeals hears oral arguments across Indiana to enable Hoosiers to learn more about its indispensable role. Since its 2000-2001 centennial, the court has held more than 400 "traveling oral arguments" at high schools, colleges, law schools and other venues. This will be the court's 11th *Appeals on Wheels* event this year.

Synopsis, cont.

appearance, i.e., red and glossy eyes and sluggishness, Officer Boynton believed that Johnson had ingested marijuana.

Officer Boynton continued to hear movement inside the duplex but could not pinpoint whether the movement was coming from Brooks’ duplex or the adjoining residence. Johnson stated that there was no other person in Brooks’ duplex. Officer Boynton decided to enter Brooks’ residence to make sure no other person was present who might harm the officers or destroy evidence. Officer Boynton did not find anyone else in the duplex but did observe what appeared to be marijuana on the living room coffee table.

Officer Boynton exited the residence and contacted Brooks to explain the situation. Brooks stated that she would be home shortly. However, she failed to return home, and after approximately 40 minutes, the officers decided to obtain a search warrant. After Officer Frazier obtained the search warrant, the officers entered Brooks’ residence a second time.

Officer Boynton discovered marijuana stored in plastic bags in the kitchen. Officer Frazier found a backpack, which Johnson admitted was his. The backpack contained a large amount of marijuana stored in plastic bags. Johnson later admitted that the marijuana was his and he had been dealing in marijuana. The officers also field-tested the plant material on the living room table, which testified positive for marijuana. There was also a partially smoked, hand-rolled cigarette on the table.

During the probation revocation proceedings, Johnson filed a motion to suppress the evidence seized during the

warrantless search of Brooks’ residence. After a hearing, the trial court denied Johnson’s motion to suppress after concluding that he lacked standing to challenge the search. The court also concluded that Officer Boynton’s warrantless search of Brooks’ duplex was supported by the existence of exigent circumstances, i.e., the concern that evidence could be destroyed if another person was in the residence.

The trial court then revoked Johnson’s probation after concluding that the State proved by a preponderance of the evidence that Johnson possessed and committed dealing in marijuana. Johnson was ordered to serve 12 months in the Department of Correction, with credit for 81 days of time served, under Cause Number 48Co4-0911-FC-667. And under Cause Number 48Co4-1201-FD-164, Johnson was ordered to serve his previously suspended 24-month sentence in the Department of Correction. Johnson appeals the revocation of his probation and challenges the warrantless search of Brooks’ residence under the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution.

The State argues that Johnson cannot claim that the warrantless search violated the Fourth Amendment or Article 1, Section 11 because he did not personally have a reasonable expectation of privacy in Brooks’ residence. Johnson acknowledges that he does not own or live in Brooks’ home, but argues that he does have a reasonable expectation of privacy because he was a frequent visitor and had sole control over the residence on numerous occasions, including on the day he was arrested.

Johnson also argues that he may challenge the search of his backpack under Article 1, Section 11, which provides additional protection for claimed possessions irrespective of the defendant’s interest in the place where the possession is found.

Johnson also argues that the warrantless search violates the Fourth Amendment and Article 1, Section 11. Absent exigent circumstances, under the Fourth Amendment, warrantless searches of homes are presumptively unreasonable. Under Article 1, Section 11, the State must show that under the totality of the circumstances, the police intrusion was reasonable.

Johnson argues that the search violated both the Fourth Amendment and Article 1, Section 11 because, at the time of the search, Johnson was the only occupant of Brooks’ residence, he was handcuffed and located outside of the home, there was no evidence that any person required police assistance or that evidence might be destroyed, and there were no concerns for officer safety.

In response, the State argues that the officers smelled the odor of burnt marijuana when Johnson answered the door, and Johnson appeared to have recently smoked marijuana. The officers could also hear movement inside the duplex, but were unable to determine whether the movement was occurring in Brooks’ residence or the adjoining duplex.

Therefore, the State contends that it was constitutionally permissible for Officer Boynton to enter Brooks’ residence to perform a protective sweep and to make sure that evidence was not being destroyed.

views. Our court is virtually alone in the amount of discretion it has.

- Justice Sandra Day O’Connor

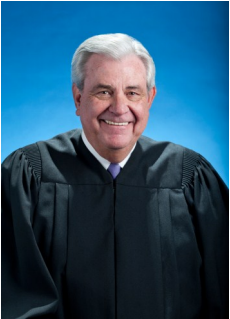
Restriction on free thought and free speech is the most dangerous of all subversions. It is the one un-American act that could most easily defeat us.

- Justice Thurgood Marshall

The day you see a camera come into our courtroom, it’s going to roll over my dead body.

- Justice David Souter

Today’s Panel of Judges



The Honorable Michael P. Barnes

St. Joseph County



The Honorable Paul D. Mathias

Allen County



The Honorable Terry A. Crone

St. Joseph County

Michael P. Barnes was appointed to the Court of Appeals of Indiana in May 2000 after long service as the St. Joseph County Prosecuting Attorney. He was retained on the Court by election in 2002 and 2012 and served as Presiding Judge of the 3rd District from 2009 through 2011.

In 2012 he wrote 144 majority opinions for the Court of Appeals. Judge Barnes was born and raised in rural Illinois. He earned a B.A. in History at St. Ambrose College in Davenport, IA in 1970 and received his J.D. in 1973 from the University of Notre Dame Law School.

He practiced law from 1973-78 at the South Bend law firm of Voor, Jackson, McMichael and Allen, while also serving as Deputy Prosecuting Attorney. Voters chose him in 1978 to be the St. Joseph County Prosecuting Attorney, an office he held for 20 years over five elections.

While prosecutor, he oversaw a staff of 65 and spearheaded development of the CASIE Center for child victims of physical and/or sexual abuse, which continues to serve the community. Judge Barnes also created a domestic and family violence unit in the Prosecutor’s office and launched a pretrial diversion program for nonviolent misdemeanor offenders that served as a model for successful state legislation. The domestic and family violence unit focused solely on crimes against women and children, including abuse and neglect.

Judge Barnes personally tried more than 25 murder and other major felony cases while overseeing a staff of 12 to 15 deputy prosecutors.

His efforts to collect delinquent child support payments garnered more than \$100 million for children in St. Joseph County. For those efforts, he received

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Paul D. Mathias is a fifth-generation Hoosier who deeply believes that Indiana is a special place to live. He is honored to serve on the Court of Appeals, where he strives daily to reflect and protect Hoosier values within the law.

Judge Mathias practiced law in Fort Wayne, concentrating in construction law, personal injury, and appellate practice. He was appointed Referee of the Allen County Small Claims Court in 1985 and served as Judge of the Allen Superior Court from 1989-2000 when he was appointed to the Court of Appeals. In 2002 and 2012, he was retained by election to the court.

Judge Mathias’s professional achievements are rooted in a strong educational foundation. He attended the public schools in Fort Wayne, where he was a National Merit Finalist and scholarship recipient. In 1976 Judge Mathias graduated *cum laude* from Harvard University with a bachelor’s degree in General Studies, concentrating in Government. He earned his law degree in 1979 from Indiana University School of Law-Bloomington, where he was a member of the Sherman Minton Moot Court Team and the *Order of Barristers*.

Judge Mathias was an officer of the Indiana Judges Association from 1993-1999 and its president from 1997-1999. He is deeply honored to be one of only 92 Hoosiers to receive the Centennial Service Award from the Indiana State Bar Association, and he was named a Sagamore of the Wabash by two governors. Judge Mathias is keenly interested in the intersection of law and technology and often consults and speaks on tech

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Terry A. Crone was appointed to the Court of Appeals March 8, 2004 by Governor Joseph E. Kernan.

Judge Crone was raised in South Bend. He graduated cum laude from DePauw University with a double major in political science and history in 1974 and graduated from Notre Dame Law School in 1977.

Judge Crone practiced law for nine years, concentrating in areas of civil practice, and served as the St. Joseph County Attorney from 1981 to 1986. In 1986, he was appointed Magistrate of the St. Joseph Circuit Court, where he served until his appointment as Judge of the St. Joseph Circuit Court in 1989.

Judge Crone is a past President of the St. Joseph County Bar Association and a former member of the Board of Managers of the Indiana Judges Association, the Supreme Court Committee on Character and Fitness, and the Alternative Dispute Resolution Committee of the Indiana Judicial Conference.

Judge Crone is a past Chair of the Appellate Practice Section of the Indiana State Bar Association and is a member of the St. Joseph County, Indianapolis, Marion County, Indiana State and American Bar Associations, the American Judicature Society, and the Phi Delta Phi Honorary Legal Society.

Judge Crone is a frequent speaker at legal education programs. He helped found a program in South Bend to familiarize minority high school students with the law and related fields and was a founding member of the South Bend Commission on the Status of African-American Males and the St. Joseph County Coalition Against Drugs.

As Circuit Court judge, he also initiated the first Spanish-speaking program for public defenders in St. Joseph County.

Judge Crone was retained on the

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Justice, Quoted

The complete independence of the courts of justice is peculiarly essential in a limited Constitution.

- Alexander Hamilton, Federalist 78

It is emphatically the province and duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each.

- Chief Justice John Marshall

Whatever disagreement there may be as to the scope of the phrase "due process of law" there can be no doubt that it embraces the fundamental conception of a fair trial, with opportunity to be heard.

- Justice Oliver Wendell Holmes, Jr.

Law matters, because it keeps us safe, because it protects our most fundamental rights and freedoms, and because it is the foundation of our democracy.

- Justice Elena Kagan

Most high courts in other nations do not have discretion, such as we enjoy, in selecting the cases that the high court re-